Office-Supreme Court, U.S.
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SEP 17 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

Number 469.

ARCHIE J. LAYTON, ISAAC A. BYRD, JAMES W. BROWN, and JOSEPH R. AINLEY, in Behalf of Themselves and a Committee for and in Behalf of All Other Persons of a Class Similarly Situated,
Petitioners,

vs.

SELB MANUFACTURING COMPANY, a Division of Western, Inc., a Corporation; and BLADES MANUFACTURING CORPORATION, a Corporation, and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, a Labor Organization,
Respondents.

BRIEF

Of Respondents, Selb Manufacturing Company, a Division of Western, Inc., a Corporation, and Blades Manufacturing Corporation, a Corporation, in Opposition to Petition for Writ of Certiorari.

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OPINIONS BELOW.

The opinion of the Court of Appeals for the Eighth Circuit is reported at 359 Fed. 2d 715. Since Petitioners failed to include such opinion as an appendix to their Petition, these Respondents do so here as Appendix A. The opinion of the District Court is reported at 236 Federal Supplement 451.

QUESTIONS PRESENTED.

The questions which Petitioners assert are presented in this case are in fact not present because:

(a) Petitioners "Questions Presented" do not reflect the actual facts as shown by the record herein, and

(b) The questions which Petitioners assert are present were not involved nor decided by the Court of Appeals for the Eighth Circuit.

In order to demonstrate the foregoing, and because Petitioners' Statement of Facts is wholly insufficient, Respondents deem it necessary to make their own Statement of the Case, which follows:

STATEMENT OF THE CASE.

For convenience, Respondents Selb Manufacturing Company and Blades Manufacturing Corporation will be referred to herein as Respondent-Company and Respondent International Association of Machinists District Number 9 will be referred to as Respondent-Union.[1]

Respondent-Union was the sole and exclusive bargaining agent for all production, maintenance and machine shop employees (including Petitioners herein) of Respondent-Company. A grievance was filed by Respondent-Union which ultimately led to an Arbitration Award which ordered Respondent-Company to rehire employees laid off after a certain date, make them whole financially and return machinery and equipment from where they had been shipped to St. Louis.

After the Arbitration Award became final, but was not complied with by the Respondent-Company, Respondent-Union filed suit under Section 301 of the National Labor Relations Act, 29 U. S. C., Section 185, for Specific Performance of said Award. On December 27th, 1961, the

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[1] In addition to Petitioners' record in the Court of Appeals, Respondents filed a Supplemental Record. Therefore, reference to Petitioners' record is made as (R). Reference to Respondents' Supplemental Record is made as (SR).

District Court entered its conclusions of law that the grievance in question was submitted by Respondent-Union and Respondent-Company to arbitration under their contract, and the Arbitration Award became final and binding upon Respondent-Union and Respondent-Company. The District Court then entered its Decree compelling specific performance of the Arbitration Award, and specifically retained jurisdiction for the purpose of carrying out a Stipulation on Subsequent Procedure entered in by the parties.

The Stipulation on Subsequent Procedure was entered into because the Arbitration Award did not declare the names of the employees who were entitled to be reinstated, how much money each such employee was entitled to receive, what machinery and work were to be returned to St. Louis, and because the parties recognized that further proceedings would have to be had in order to determine the foregoing, so that a final judgment on which an execution could issue could be entered.

The Stipulation on Subsequent Procedure provided as follows (S. R. 29):

> "In the event the Court enters its order decreeing specific performance of the Arbitration Award then, and in the event that no appeal is taken, the parties shall attempt to reach agreement on what specifically the defendants must do in order to comply with the aforesaid Arbitration Award. In the event that the parties are unable to reach agreement within thirty days after expiration of the period permitted for appeal, or such additional time as the parties may agree upon, then on application by either party the Court shall appoint a commissioner to implement compliance with the Award.
>
> In the event that either party hereto appeals the finding and order of this Court and/or any appellate

court with respect to whether or not defendants must comply with the arbitration award, the further steps mentioned above shall be held in abeyance pending disposition of said appellate procedure. If it is finally determined, on appeal, that defendants must comply, then the aforesaid procedure shall be followed."

On July 6th, 1962, Court of Appeals for the Eighth Circuit affirmed the decree of the District Court, and stated that the District Court retained jurisdiction for further proceedings. (**Selb Manufacturing Company v. International Association of Machinists, District 9,** 305 F. 2d 177). On August 29th, 1962, Court of Appeals issued its mandate.

After the decision of the Court of Appeals was handed down, Respondent-Union (as plaintiff) and Respondent-Company (as defendant) engaged in negotiations, looking towards a possible settlement of the case. After consideration and rejection of a number of proposals made by the Company, the Respondent-Union decided to accept in settlement the sum of One Hundred Twenty-five Thousand Dollars ($125,000.00) plus certain re-employment rights (as set forth in the Settlement Agreement of October 11th, 1962, Defendants' Exhibit A-1, S. R. 35-39) (S. R. 41).

A meeting of the employees of the Company was held on September 22nd, 1962, at which Petitioners herein were present. The employees were advised that Respondent-Union had authorized its attorneys to settle the pending litigation for the total amount of One Hundred Twenty-Five Thousand Dollars ($125,000.00) (S. R. 41, R. 54, 55), and then the membership voted that District Number 9, rather than a committee of its members, should process the claims of the employees to determine what portion or amount of the settlement should be received by each of those persons eligible to share in the settlement (R. 28, 35; S. R. 41, 50, 51).

After the September 22nd, 1962, meeting Respondent-Union acting pursuant to the authorization given it by the membership and the District Board (R. 42) entered into the Settlement Agreement and Stipulation (S. R. 35-39). Pursuant to this Agreement the Respondent-Company paid Respondent-Union One Hundred Twenty-Five Thousand Dollars ($125,000.00), which the Union accepted "on its behalf of its members in full and complete satisfaction and settlement of all claims, demands, actions, causes of action and judgment . . ." The agreement further provided that under certain conditions the Company would be required to re-open a plant in St. Louis, and that in any event, if the Company re-opened any plant within the Union's jurisdictional area it would recall the employees in question (S. R. 37, 38).

Upon receipt of the aforesaid One Hundred Twenty-Five Thousand Dollars ($125,000.00), Respondent-Union began processing the claims of the individual members. In the course of processing these claims to determine the amount each eligible employee was entitled to receive the Union sent at least four letters to the employees requesting information relative to their employment in order to determine their eligibility and the amount of their respective claims to the settlement proceedings (S. R. 42-46). The processing of these claims was interrupted because of a protest filed by Petitioner-Layton, and as a result of his objections another meeting of the Union membership was called and took place on March 30th, 1963 (S. R. 39, 40).

At the March 30th, 1963, meeting the officers and counsel of Respondent-Union explained in detail that the aforesaid settlement of the case had been made with the Company, but that any one of the members could file a suit to set aside the settlement. The Union officers and counsel made it perfectly clear that none of the funds received in settlement of the litigation would be disbursed unless everyone present agreed to the settlement and indicated

by his vote that he did not intend to file a suit to contest the settlement (S. R. 48-50, 53, 54, 56).

All of the Petitioners were present at this second meeting and took an active part, particularly Petitioner-Layton who stated he had checked the settlement thoroughly with his committee (S. R. 52). Petitioner Layton also testified in a hearing before the District Court that he had engaged a law firm in February of 1963 to check the court records and said law firm showed copies of the court records to Layton (R. 52, 53).

During discussion of the motion whether to approve the aforesaid settlement that had been made between the Company and the Union, Petitioner Layton asked whether the vote was to be an approval of the entire settlement, or just of the money portion (S. R. 55). It was explained to him and the membership that the proposal they were voting on was whether to approve a settlement of the entire case, not just the money, but jobs and everything (S. R. 55, 56).

At the conclusion of the discussion the Union membership, without objection or a dissenting vote from any of the four Petitioners, unanimously approved and ratified the settlement (S. R. 57).

On June 14th, 1963, pursuant to the approval and ratification of the settlement by the membership, and after determining the persons eligible to share in the settlement proceeds and the amount to which each such employee was entitled, as it had been authorized to do by the membership, the Union sent out letters to the employees entitled to share in the proceeds of the settlement, each of which letters contained the following statement (R. 12):

> "Enclosed please find check in the amount of $...., which represents payment in full of your claim

against Selb Manufacturing Company and Blades Manufacturing Corporation pursuant to the Settlement Agreement entered into in the case of **I A of M District 9 versus Selb Manufacturing Company and Blades Manufacturing Corporation** No. 61 C 20 (1) in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division . . ."

Enclosed with each letter was a check to the respective employees, including Petitioners herein (S. R. 58).

On the back of each of the checks there was the following stamped release (S. R. 61):

"Endorsement constitutes full and complete satisfaction and settlement of my claims arising out of Cause No. 61 C 20 (1), in the U. S. District Court for the Eastern Judicial District of Missouri, Eastern Division, styled **International Association of Machinists, District 9 versus Selb Manufacturing Company et al.**, and a full and complete Release of the above mentioned parties, the I A of M District 9 Welfare Association and their officers, agents and employees."

Each of the above checks received by the Petitioners was endorsed by them below the stamped release. At the hearing on the Motion each of them admitted endorsing the check and receiving the money (R. 57, 69, 71, 74).

On March 15th, 1965, after a lapse of almost 2½ years, Petitioners filed their motion under Rule 60 (b) (6), Federal Rules of Civil Procedures, seeking to set aside the order of the District Court dismissing this case pursuant to the settlement previously made. The District Court gave Petitioners a full hearing on their Motion.

DISTRICT COURT FINDINGS.

Based upon the foregoing facts, the District Court overruled Petitioners' Motion herein and in addition to finding essentially the foregoing facts (R. 79), found that the Petitioners had full and complete knowledge of the settlement; that the Union that brought the arbitration was responsible for obtaining the relief and was the proper representative of all of the employees (R. 82); that the Union and Company had the right to settle the litigation without leave of the Court of Appeals (R. 83) and that in any event the facts showed clearly that the Petitioners had full knowledge of the settlement made by the Union and they were barred from proceeding by acceptance of the money and the signing of the Releases (R. 84).

COURT OF APPEALS FINDINGS.

In affirming the District Court, the Court of Appeals noted that sole ground relied upon by Petitioners in their appeal was that the District Court erred in allowing a judgment which had been affirmed to be set aside and dismissed without permission or approval of the Appellate Court contrary to the holdings in its cases of **Hartman v. Lauchli**, 304 F. 2d 431 (8th Cir. 1962) and **Thornton v. Carter**, 109 F. 2d 316 (8th Cir. 1940). In disposing of this contention the Court of Appeals pointed out that the legal principle involved in those cases had no application whatsoever to the facts in this case. The Court of Appeals specifically pointed out that the District Court retained jurisdiction for the purposes of carrying out the Stipulation on Subsequent Procedure and that it had recognized the possibility of a settlement when it stated in its affirming opinion that "any controversy over backpay allowances can, **if necessary**, be dealt with by the District Court in accordance with the Stipulation of the parties relating to implementation of the award."

Thus, the Court of Appeals, in interpreting its own mandate, found that the parties did **not** violate its mandate, but in fact acted in conformance with it, and this was the sole ground raised by Petitioners and the sole stated ground on which the Court of Appeals affirmed.

In addition to holding Petitioners' appeal to be wholly without merit, the Court of Appeals found that, under the facts, the Petitioners' appeal was frivolous and assessed damages against them.

ARGUMENT AGAINST GRANTING CERTIORARI.

In support of their Petition for a Writ of Certiorari, Petitioners urge and refer this Court to the arguments they made in their Petition for Re-hearing filed in the Court of Appeals. Looking to that document, Respondents find no reasons advanced of such moment that it would compel this Court to grant Certiorari, much less any of the reasons suggested by this Court under its Rule 19. The most that can be said of Petitioners' argument is that they seem to be taking the remarkable position of asserting that the Court of Appeals misinterpreted its own mandate and opinion.

This being the case, Respondents submit that, under any reasonable or accepted standard, the present record does not reflect any persuasive reason why the Court should hear this case.

To begin with, the questions which the Petitioners state are present here are, in fact, not present at all. The basic reason for this is that the questions, as posed, assume facts which do not appear in and are not based on the record. Specifically, Question "A" states that the "membership involved has revoked the settlement authority." This statement is wholly inaccurate, and Respondents were compelled to make a rather detailed Statement of the Case in order to show clearly the err of this assertion. Merely a cursory reading of Respondents' Statement of

the Case and the record is sufficient to demonstrate this err and inaccuracy. It is crystal clear from the record that the membership did approve the settlement and did ratify the same, with full knowledge of its terms. Furthermore, they accepted all the benefits of the settlement and enjoyed these benefits for almost two and a half years before Petitioners filed their Motion under 60 (b) (6); the Motion which initiated these proceedings. These were the facts found by the District Court and affirmed by the Court of Appeals. Since the Petitioners' assumed facts are incorrect, the question based thereon is specious, and in fact the question as framed presents no real question at all.

Question "B" also presents an issue which has no real meaning here.

Petitioners, in this question, ask whether an appellate court can allow its mandate to be changed without its consent. The answer, given by the best available source—the appellate court that issued the mandate—is that the mandate in question here was not altered nor changed and thus, the question is irrelevant. As stated by the Court of Appeals for the Eighth Circuit:

> "As previously mentioned in the chronological description of the event which eventually culminated in the instant appeal, this Court specifically noted that the District Court retained jurisdiction of the case for the purpose of carrying out the Stipulation of Subsequent Procedure filed by the parties. After remand of the case, the Appellee-Union and the Appellee-Company entered into a settlement agreement. The fact that the District Court then, upon the request of the parties to the action, dismissed the cause of action with prejudice to the plaintiff in no manner disturbed the mandate of this Court. It is obvious that in affirming the District Court's judgment, this

> Court recognized the possibility of such a settlement when it stated that 'any controversy over backpay allowances can, **if necessary,** be dealt with by the District Court in accordance with the stipulation of the parties relating to implementation of the award.' **Selb Manufacturing Company v. International Association of Machinists,** *supra,* at 179. It is abundantly clear that the District Court in approving the stipulation dismissing the case acted in conformance with the mandate of this Court. The appeal herein is wholly without merit."

The Court also considered the cases again cited here by Petitioners and found the teachings of those cases inapplicable, since their facts were clearly distinguishable from the present case. Clearly, Petitioners' Question "B" presents nothing for this Court to consider.

The last question, Question "C", claimed to be present is likewise not present, since it is nothing more than a rephrasing of Question "A" and is, like Question "A", also contrary to the facts.

From the foregoing, it is clear that the questions posed by Petitioners raise non-existent issues, since they are questions based upon facts erroneously assumed and stated; hence, no real issue is presented for this Court to decide.

In addition, a search of the record fails to disclose any factual, substantive or procedural error requiring that Court to grant Certiorari. Since no real issues are raised, it is obvious that issues of sufficient importance to be considered by this Court are not raised. Nor has there been any showing of a conflict in the opinions between the opinion of the Court of Appeals for the Eighth Circuit with its own opinions, or with the opinions of other Circuit Court of Appeals, or with opinions of this Court.

Respondents also point out that the judgment of the Court of Appeals was manifestly correct and for the

right parties. The facts of the entire proceedings, considered by the District Court and the Court of Appeals, give rise to a number of valid defenses that bar Petitioners from relief in any event. These were presented by Respondents below and Respondents do not consider it appropriate to set forth these additional defenses here. Respondents, however, do point out that Petitioners were afforded a full and fair hearing in the District Court and the Court of Appeals, and Petitioners' only argument appears to be that the Court of Appeals misinterpreted its own mandate, previously issued by that Court, even though that Court made it perfectly clear that everything done by the parties was well within what the Court intended and contemplated.

In short, Petitioners advance no reasons even resembling those reasons of the character which Supreme Court Rule 19 states will be considered for granting of review on certiorari.

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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September, 1966.